

**ALASKA STATE LEGISLATURE  
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE**

May 4, 2021

3:08 p.m.

**MEMBERS PRESENT**

Representative Liz Snyder, Co-Chair  
Representative Tiffany Zulkosky, Co-Chair  
Representative Ivy Spohnholz  
Representative Ken McCarty  
Representative Mike Prax  
Representative Christopher Kurka

**MEMBERS ABSENT**

Representative Zack Fields

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 65(JUD)

"An Act relating to immunity for consulting physicians, podiatrists, osteopaths, advanced practice registered nurses, physician assistants, chiropractors, dentists, optometrists, and pharmacists."

- MOVED HCS CSSB 65(HSS) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 89(FIN)

"An Act relating to house rules for assisted living homes."

- HEARD & HELD

HOUSE BILL NO. 105

"An Act relating to the duties of the commissioner of corrections; relating to the detention of minors; relating to minors subject to adult courts; relating to the placement of minors in adult correctional facilities; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 116

"An Act relating to care of juveniles and to juvenile justice; relating to employment of juvenile probation officers by the Department of Health and Social Services; relating to terms used in juvenile justice; relating to mandatory reporters of child

abuse or neglect; relating to sexual assault in the third degree; relating to sexual assault in the fourth degree; repealing a requirement for administrative revocation of a minor's driver's license, permit, privilege to drive, or privilege to obtain a license for consumption or possession of alcohol or drugs; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 153

"An Act relating to the identification, location, and notification of specified family members of a child who is in state custody."

- BILL HEARING CANCELED

HOUSE BILL NO. 106

"An Act relating to missing persons under 21 years of age."

- BILL HEARING CANCELED

#### **PREVIOUS COMMITTEE ACTION**

BILL: SB 65

SHORT TITLE: LIABILITY CONSULTING HEALTH CARE PROVIDER

SPONSOR(S): SENATOR(S) KIEHL

02/03/21	(S)	READ THE FIRST TIME - REFERRALS
02/03/21	(S)	HSS, JUD
02/16/21	(S)	HSS AT 1:30 PM BUTROVICH 205
02/16/21	(S)	Heard & Held
02/16/21	(S)	MINUTE(HSS)
02/18/21	(S)	HSS AT 1:30 PM BUTROVICH 205
02/18/21	(S)	Moved CSSB 65(HSS) Out of Committee
02/18/21	(S)	MINUTE(HSS)
02/19/21	(S)	HSS RPT CS 3DP 1NR NEW TITLE
02/19/21	(S)	DP: WILSON, BEGICH, HUGHES
02/19/21	(S)	NR: REINBOLD
03/05/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/05/21	(S)	-- MEETING CANCELED --
03/08/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/08/21	(S)	Heard & Held
03/08/21	(S)	MINUTE(JUD)
03/12/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/12/21	(S)	Heard & Held
03/12/21	(S)	MINUTE(JUD)
03/31/21	(S)	JUD AT 1:30 PM BUTROVICH 205

03/31/21	(S)	Moved CSSB 65(JUD) Out of Committee
03/31/21	(S)	MINUTE(JUD)
04/03/21	(S)	JUD RPT CS 3DP 2NR NEW TITLE
04/03/21	(S)	DP: KIEHL, HUGHES, MYERS
04/03/21	(S)	NR: REINBOLD, SHOWER
04/12/21	(S)	TRANSMITTED TO (H)
04/12/21	(S)	VERSION: CSSB 65(JUD)
04/14/21	(H)	READ THE FIRST TIME - REFERRALS
04/14/21	(H)	HSS, JUD
04/27/21	(H)	HSS AT 3:00 PM DAVIS 106
04/27/21	(H)	Heard & Held
04/27/21	(H)	MINUTE(HSS)
04/29/21	(H)	HSS AT 3:00 PM DAVIS 106
04/29/21	(H)	-- MEETING CANCELED --
05/04/21	(H)	HSS AT 3:00 PM DAVIS 106

BILL: SB 89

SHORT TITLE: ASSISTED LIVING HOMES: HOUSE RULES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/22/21	(S)	READ THE FIRST TIME - REFERRALS
02/22/21	(S)	HSS, FIN
03/18/21	(S)	HSS AT 1:30 PM BUTROVICH 205
03/18/21	(S)	Heard & Held
03/18/21	(S)	MINUTE(HSS)
03/30/21	(S)	HSS AT 1:30 PM BUTROVICH 205
03/30/21	(S)	Moved SB 89 Out of Committee
03/30/21	(S)	MINUTE(HSS)
03/31/21	(S)	HSS RPT 4DP 1NR
03/31/21	(S)	DP: WILSON, BEGICH, COSTELLO, HUGHES
03/31/21	(S)	NR: REINBOLD
04/07/21	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/07/21	(S)	Heard & Held
04/07/21	(S)	MINUTE(FIN)
04/12/21	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/12/21	(S)	<Bill Hearing Rescheduled to 4/14/21>
04/14/21	(S)	FIN RPT CS 6DP 1NR SAME TITLE
04/14/21	(S)	DP: STEDMAN, BISHOP, HOFFMAN, WILSON, WIELECHOWSKI, VON IMHOF
04/14/21	(S)	NR: OLSON
04/14/21	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/14/21	(S)	Moved CSSB 89(FIN) Out of Committee
04/14/21	(S)	MINUTE(FIN)
04/26/21	(S)	TRANSMITTED TO (H)
04/26/21	(S)	VERSION: CSSB 89(FIN)
04/28/21	(H)	READ THE FIRST TIME - REFERRALS
04/28/21	(H)	HSS

04/29/21	(H)	HSS AT 3:00 PM DAVIS 106
04/29/21	(H)	-- MEETING CANCELED --
05/04/21	(H)	HSS AT 3:00 PM DAVIS 106

BILL: HB 105

SHORT TITLE: DETENTION OF MINORS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/19/21	(H)	READ THE FIRST TIME - REFERRALS
02/19/21	(H)	JUD, HSS
03/05/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/05/21	(H)	Heard & Held
03/05/21	(H)	MINUTE(JUD)
03/08/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/08/21	(H)	<Bill Hearing Canceled>
03/10/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/10/21	(H)	Moved CSHB 105(JUD) Out of Committee
03/10/21	(H)	MINUTE(JUD)
03/12/21	(H)	JUD RPT CS(JUD) 4DP 3NR
03/12/21	(H)	DP: DRUMMOND, SNYDER, KREISS-TOMKINS, CLAMAN
03/12/21	(H)	NR: EASTMAN, VANCE, KURKA
04/15/21	(H)	HSS AT 3:00 PM DAVIS 106
04/15/21	(H)	Heard & Held
04/15/21	(H)	MINUTE(HSS)
04/27/21	(H)	HSS AT 3:00 PM DAVIS 106
04/27/21	(H)	Heard & Held
04/27/21	(H)	MINUTE(HSS)
04/29/21	(H)	HSS AT 3:00 PM DAVIS 106
04/29/21	(H)	-- MEETING CANCELED --
05/04/21	(H)	HSS AT 3:00 PM DAVIS 106

BILL: HB 116

SHORT TITLE: JUVENILES: JUSTICE, FACILITES, TREATMENT

SPONSOR(s): SPOHNHOLZ

02/24/21	(H)	READ THE FIRST TIME - REFERRALS
02/24/21	(H)	HSS, JUD
04/09/21	(H)	HSS REFERRAL MOVED TO AFTER JUD
04/09/21	(H)	BILL REPRINTED
04/12/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/12/21	(H)	Heard & Held
04/12/21	(H)	MINUTE(JUD)
04/14/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/14/21	(H)	Heard & Held
04/14/21	(H)	MINUTE(JUD)
04/16/21	(H)	JUD AT 1:00 PM GRUENBERG 120

04/16/21	(H)	Moved HB 116 Out of Committee
04/16/21	(H)	MINUTE(JUD)
04/19/21	(H)	JUD RPT 3DP 3AM
04/19/21	(H)	DP: DRUMMOND, SNYDER, CLAMAN
04/19/21	(H)	AM: EASTMAN, VANCE, KURKA
04/27/21	(H)	HSS AT 3:00 PM DAVIS 106
04/27/21	(H)	Heard & Held
04/27/21	(H)	MINUTE(HSS)
04/29/21	(H)	HSS AT 3:00 PM DAVIS 106
04/29/21	(H)	-- MEETING CANCELED --
05/04/21	(H)	HSS AT 3:00 PM DAVIS 106

#### **WITNESS REGISTER**

SENATOR JESSE KIEHL  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, testified and answered questions during the hearing on SB 65.

JOHN LEE, Director  
Anchorage Office  
Division of Senior and Disabilities Services  
Department of Health and Social Services (DHSS)  
Anchorage, Alaska

**POSITION STATEMENT:** Presented CSSB 89(FIN) on behalf of the House Rules Committee by request of the governor.

CRAIG BAXTER, Assisted Living Home Manager  
Residential Licensing/Background Check Program  
Division of Health Services  
Department of Health and Social Services (DHSS)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on SB 89, on behalf of the House Rules Committee by request of the governor.

MATT DAVIDSON, Social Services Program Officer  
Division of Juvenile Justice (DJJ)  
Department of Health and Social Services (DHSS)  
Juneau, Alaska

**POSITION STATEMENT:** Explained the changes under the proposed committee substitute, Version I, for HB 105.

#### **ACTION NARRATIVE**

[3:08:10 PM](#)

CO-CHAIR LIZ SNYDER called the House Health and Social Services Standing Committee meeting to order at 3:08 p.m. Representatives Spohnholz, McCarty, Prax, Zulkosky, and Snyder were present at the call to order. Representative Kurka arrived as the meeting was in progress.

**SB 65-LIABILITY CONSULTING HEALTH CARE PROVIDER**

[3:09:40 PM](#)

CO-CHAIR SNYDER announced that the first order of business would be CS FOR SENATE BILL NO. 65(JUD), "An Act relating to immunity for consulting physicians, podiatrists, osteopaths, advanced practice registered nurses, physician assistants, chiropractors, dentists, optometrists, and pharmacists."

[3:10:34 PM](#)

REPRESENTATIVE SPOHNHOLZ moved to adopt Amendment 1 to CSSB 65(JUD), labeled 32-LS0002\G.1, Fisher, 4/30/21, which read:

Page 1, line 3:

Delete **"and pharmacists"**

Insert **"pharmacists, physical therapists, and occupational therapists"**

Page 3, line 3:

Delete "or"

Following "AS 08.80":

Insert ", or a physical therapist or occupational therapist licensed under AS 08.84"

REPRESENTATIVE PRAX objected.

REPRESENTATIVE SPOHNHOLZ explained that to be consistent in who is included and who is excluded, Amendment 1 would add physical therapists and occupational therapists to the list of providers covered in the bill, which includes chiropractors, dentists, optometrists, and pharmacists.

[3:11:25 PM](#)

SENATOR JESSE KIEHL, Alaska State Legislature, as prime sponsor of SB 65, offered his appreciation for the conversations that he and Representative Spohnholz have had about Amendment 1. He maintained that [CSSB 65(JUD)], as offered to the committee, is

consistent in that all the included medical professions/disciplines have certain similarities in their scope of practice, although they cover a broad range of health care providers. The health care providers on the list have the power of diagnosis, as well as their treatment powers within their specific area of training and expertise. While physical therapists and occupational therapists are extremely valuable health care providers, with a civil liability bill it is important to consider the relative risk when the legislature is going to grant total immunity in civil law. For the other providers on the list, the scopes of practice involve much higher relative risks of physical harm within their scope of practice.

SENATOR KIEHL continued his response. He flagged the potential for a difference in the scope of practice between the treating provider and the professional who is consulted. He pointed out that the treating provider has a more limited scope of practice and the medical provider who is consulted has a much more extensive scope of practice and training. Under the bill the treating provider retains full liability, so it is important for this bill to make sure that the treating provider has the scope of practice and scope of training to fully evaluate the advice he or she is given in that unpaid consult. He said he appreciates the intention of the amendment's sponsor, but that he is more comfortable with the bill as presented.

[3:13:57 PM](#)

REPRESENTATIVE KURKA asked whether he is correct understanding that Senator Kiehl's concern is if a physical or occupational therapist gets medical advice from a doctor and then works off that advice to treat a patient, the doctor should be held liable because the license of a physical or occupational therapist is not on the same playing field as a doctor.

SENATOR KIEHL replied that the bill does not create a duty of care for consultations outside the grant of civil immunity here, but specifically to the grant of civil immunity, that difference described by Representative Kurka is a concern.

[3:15:05 PM](#)

REPRESENTATIVE SPOHNHOLZ, in relation to the sponsor's statement about diagnosis and treatment, pointed out that in Alaska a physical therapist and an occupational therapist do not need a referral from another provider. For example, a person having

trouble with his or her shoulder can choose to see a physical therapist without a doctor's prescription. Therefore, she maintained, physical therapists and occupational therapists are equivalent. They have their own board, she continued, and given the comparative other professions included in the bill, all of which have very different scopes of practices, it seems there is a lot of parody here.

CO-CHAIR SNYDER commented that the committee is talking about adding physical therapists and occupational therapists to the group of individuals that could be called and are protected, as opposed to the provider doing the calling. She said she therefore questions why adding them wouldn't be wanted.

SENATOR KIEHL answered that Amendment 1 runs both directions because it defines a health care provider for purposes both of making the phone call and receiving the call, not that it would have to be by phone.

CO-CHAIR SNYDER asked whether it is correct that the liability protection is to the one receiving the call.

SENATOR KIEHL [nodded in the affirmative].

[3:17:01 PM](#)

REPRESENTATIVE MCCARTY asked whether he is correct that the bill sponsor is saying that the group included in SB 65 is at greater risk in court-type situations than, say, a mental health provider, or physical therapist, or occupational therapist.

SENATOR KIEHL confirmed that Representative McCarty's statement is correct.

[3:18:24 PM](#)

REPRESENTATIVE PRAX, to provide context, asked how often a physical therapist or an occupational therapist would call a specialist as compared to a general practitioner for example who would call specialists more often.

REPRESENTATIVE SPOHNHOLZ replied that that is possibly true, but she is unaware of evidence to show that it is true or not true. She said calls could be going either way with how the bill is currently crafted. With the way the bill is drafted, and the way Amendment 1 is considered, she added, a physical therapist or occupational therapist could call a general practitioner or



orthoped for consultation. Since Alaska has direct entry to physical therapy and occupational therapy it makes sense to include physical therapists and occupational therapists to ensure that that two-way communication is happening effectively.

[3:21:04 PM](#)

REPRESENTATIVE MCCARTY expressed his understanding that the concern is that an orthoped could call a physical therapist and then the physical therapist would be the consulting person, and SB 65 is to protect the consulting individual.

REPRESENTATIVE SPOHNHOLZ responded that, given the way the bill is drafted, it could go either way.

CO-CHAIR SNYDER pointed out that the liability protection is for the person being called.

REPRESENTATIVE MCCARTY said that is his understanding as well. So, he continued, that gets into the question of how frequently physical or occupational therapists are consulted, and whether that puts them in greater civil liability type things that exist in the industry of health care. He stated that what he is hearing from the bill sponsor is that this category of people is at a higher risk than others.

CO-CHAIR SNYDER replied that that is what is being assumed.

[3:22:41 PM](#)

REPRESENTATIVE SPOHNHOLZ asked the bill sponsor whether the aforementioned is the case. Given the bill is drafted to include chiropractors, she stated, the assumption is that they are at higher risk of potential liability for consulting than a physical therapist, osteopath, or physician's assistant, yet she is unsure whether evidence of that has been seen.

SENATOR KIEHL answered that chiropractors were added in the [Senate Health and Social Services Standing Committee], and one of the meaningful distinctions among those professions is diagnostic power. He said it is good law that in Alaska someone can go directly to see a physical therapist or occupational therapist, and because their scope of practice does not extend to diagnosis, their exposure when looking at statute is limited; whereas the other medical professions included in the bill do have the power of diagnosis in their statutes. Almost all have the power of prescription, and to a greater or lesser extent

optometrists can prescribe a limited quantity of opioids; the exception there would be the pharmacists themselves. The scope of practice of pharmacists is quite limited. The number of topics on which a pharmacist might provide a consultation to one of the other providers on the list is limited to pharmacology, so there aren't broader concerns about their ability to, for example, evaluate advice they are given or to be asked advice on a topic. He expressed his hope that this covers Representative Spohnholz' thoughts about the consistency of the list.

[3:25:23 PM](#)

REPRESENTATIVE PRAX maintained his objection. He offered his appreciation for what Representative Spohnholz is saying to try to make this applicable equally from the point of the law. But, he continued, what is being done on the other side is to give a privilege to certain groups. He said he is hesitant to make that broader at this time but might reconsider at another time.

REPRESENTATIVE KURKA stated he is split both ways on who should receive the liability protection under certain circumstances, but he also sees that physicians should take responsibility for their advice in other situations. He can see situations where individuals are consulted in their respective professions, whether or not they are physical therapists, and maybe the liability protection for their profession versus the situation where they are getting advice from a different licensure, and there is the possibility that these are separate things.

[3:28:18 PM](#)

CO-CHAIR ZULKOSKY offered her appreciation for the explanation of looking at the provider types included in the bill and what aligning all of them means with respect to the power of diagnosis and the level of risk that is associated among them in terms of prescribing power or rendering diagnoses. Physical therapists and occupational therapists may not necessarily have the power of diagnosis, and they also do not have the level of risk in terms of the treatment that they provide. While there is parody in the type of treatment that might be provided, a physical therapist, for example, is not doing high manipulation like a chiropractor would be doing. She asked how there is not parody if there is a lower level of risk that might be experienced in consulting a physical therapist or occupational therapist or vice versa.

SENATOR KIEHL responded that the relative level of risk gets to the need to grant statutory immunity. Where that level of risk is lower, he said, the need to grant a total immunity from suit is also significantly lower. Excluding someone from this list of total immunity from lawsuit doesn't create some duty of care where it didn't exist before, it isn't exposing them to brand new lawsuits that others are being exempted from. That comparative risk of harm is a significant factor in looking at who needs to be covered under the bill.

[3:31:49 PM](#)

REPRESENTATIVE SPOHNHOLZ suggested that SB 65 tries to create comfort on the part of a consulting provider to provide candid, effective consultation to another provider, a positive intent of this bill that she supports. This is an issue of parody, she opined, because physical therapists diagnose and do spinal manipulation just as chiropractors do. Physical therapists have a very broad range of practice and given the expanding scope of their practice over time and that they do provide consultation, it's an issue of parody if chiropractors are going to be included. Physical therapists do many of the same things plus other invasive procedures that they didn't do 50 years ago but are doing now. There are specialties in physical therapy just like there are specialties in nursing, physician assistants, or medical doctors. This is a matter of parody, and if they are not going to be included then perhaps chiropractors, dentists, and optometrists should be taken out. But, if all of those are going to be included, then not including physical therapists and occupational therapists would be an oversight.

[3:34:14 PM](#)

A roll call vote was taken. Representatives Kurka, Spohnholz, McCarty, Prax, Zulkosky, and Snyder voted in favor of Amendment 1. Therefore, Amendment 1 was adopted by a vote of 6-0.

REPRESENTATIVE MCCARTY commented that this is a marvelous bill that frees up the ability for professionals to consult with one another to improve health care professions without the threat of lawsuits.

REPRESENTATIVE PRAX thanked the bill sponsor for agreeing to personally call one of his constituents who had questions about the bill.

[3:36:07 PM](#)

CO-CHAIR ZULKOSKY moved to report CSSB 65(JUD), as amended, out of committee with individual recommendations and the accompanying [zero] fiscal note.

REPRESENTATIVE KURKA stated that he is not going to oppose the bill at this time and probably will support it on the floor as written, but he is concerned about adding a lot of new language in statute. The sponsor has been clear that the intent is not to create a duty of care that wasn't there already, but he questions why a new list is being created that is not somewhere else. He is concerned about the unintended implications of creating this immunity, but the intent of the bill is important.

There being no objection, HCS CSSB 65(HSS) was reported out of the House Health and Social Services Standing Committee.

[3:39:20 PM](#)

The committee took an at-ease from 3:39 p.m. to 3:40 p.m.

**SB 89-ASSISTED LIVING HOMES: HOUSE RULES**

[3:40:07 PM](#)

CO-CHAIR SNYDER announced that the next order of business would be CS FOR SENATE BILL NO. 89(FIN), "An Act relating to house rules for assisted living homes." She noted that CSSB 89(FIN) is the companion bill to HB 103, which the committee heard on 4/13/21.

[3:40:54 PM](#)

JOHN LEE, Director, Anchorage Office, Division of Senior and Disabilities Services, Department of Health and Social Services (DHSS), presented CSSB 89(FIN) on behalf of the House Rules Committee by request of the governor. He spoke from a document titled, "SB 89 Assisted Living Homes; House Rules ONE PAGE SUMMARY." He stated that the bill is needed because Alaska's statutes are not in compliance with federal regulations that require home and community-based service providers to give people who are on waivers the same access to the community as people who are not on waivers. For example, state law allows that an assisted living home may establish house rules that address a resident's rights to have visitors.

MR. LEE pointed out that while state statute says the rules may not be unusually restrictive, the federal regulation is more explicit, stating that individuals on waivers and in such settings "are able to have visitors of their choosing at any time." Although Alaska received initial approval from the federal government for its plan to bring its settings into compliance, he advised, the approval was contingent on the state revising its statute to reflect this federal statute. Ongoing financial participation in the state's waiver programs by the federal government is reliant on services being provided in compliant settings. Without this amendment to the state statute the federal government match is in jeopardy.

MR. LEE explained that the bill proposes a simple insertion of language into the Assisted Living Homes Statutes [AS 47.33] that will bring the state into compliance with the Centers for Medicare and Medicaid Services (CMS) home and community-based settings requirements, thereby protecting Alaska's federal share of [Medicaid] payments for home and community-based [waiver] services. The bill ensures that [recipients] of residential [waiver] services will be able to live under conditions that are as much like a person's home as possible.

MR. LEE addressed who would be impacted by the bill. He related that Alaska's approximately 700 assisted living homes would be required to abide by the conditions defined in the bill. The new statutory language would afford all residents living in assisted living homes the same rights, regardless of whether the home accepts Medicaid as payment. Over 650 homes are already in compliance with these conditions because they are certified to operate home and community-based waiver services under these conditions.

MR. LEE reviewed the timeline [for compliance]. He stated that CMS requires states to have these settings in place by March 2023. He further noted that the fiscal impact is zero.

[3:43:43 PM](#)

MR. LEE provided a sectional analysis of CSSB 89(FIN). He explained that Section 1 amends AS 47.33.060, House Rules for Assisted Living Homes that Explicitly Require Consistency with Federal Law When House Rules are Established. Section 2 adds a new [subsection] for assisted living homes to make explicit that assisted living homes that provide waiver services may not adopt house rules inconsistent with federal law. Section 3 carries

the statutory amendments proposed in Section 1 and Section 2 regarding the resident's right to have visitors.

[3:44:29 PM](#)

CO-CHAIR ZULKOSKY asked whether there are any significant changes between [CSSB 89(FIN)], the Senate version before the committee, and HB 103, which the committee heard previously.

MR. LEE replied that one of the bills has language that addresses the Executive Order (EO) to split the department into two compartments, and the other does not. In further response to Co-Chair Zulkosky, he confirmed that that is the only significant change.

[3:45:26 PM](#)

REPRESENTATIVE KURKA asked which committee is the bill's next referral.

CO-CHAIR SNYDER responded that there is no other committee of referral, so the bill will next go to the House Rules Committee.

[3:46:19 PM](#)

REPRESENTATIVE MCCARTY moved to adopt Amendment 1 to CSSB 89(FIN), labeled 32-GH1675\A.2, Dunmire, 4/15/21, which read:

Page 1, lines 7 - 12:

Delete all material and insert:

"\* **Sec. 2.** AS 47.33.060 is amended by adding new subsections to read:

(e) An assisted living home shall permit an individual immediate access to a resident without requiring an appointment if the individual visits the resident during the visiting hours established by the home, subject to the resident's consent to receive a visit from the individual.

(f) An assisted living home may adopt an appointment system to facilitate visits outside of visiting hours."

REPRESENTATIVE SPOHNHOLZ objected for purposes of discussion.

REPRESENTATIVE MCCARTY withdrew Amendment 1 so as to not cause conflict with federal rules.

3:47:16 PM

REPRESENTATIVE SPOHNHOLZ moved to adopt Amendment 2 to CSSB 89(FIN), labeled 32-GH1675\A.4, Dunmire, 4/28/21, which read:

Page 2, line 1, following "environment":

Insert "**free from abuse and discrimination**"

Page 2, line 16:

Delete "and"

Insert "[AND]"

Page 2, line 18, following "**AS 47.33.060**":

Insert "**; and**

**(D) reasonable access to the Internet, to the extent available to the home;**"

Page 3, line 5, following "with":

Insert "**cultural preferences and**"

Page 3, line 11, following "home":

Insert "**without fear of reprisal or retaliation**"

Page 3, line 18:

Delete "and"

Insert "[AND]"

Page 3, line 20, following "home":

Insert "**;**

**(20) receive information in a language the resident understands; and**  
**(21) receive quality care**"

CO-CHAIR ZULKOSKY objected for purposes of discussion.

REPRESENTATIVE SPOHNHOLZ explained Amendment 2 would incorporate the following recommendations from Alaska's Office of Long Term Care Ombudsman: that residents be free from abuse and discrimination, that reasonable internet access be ensured to the extent available, that strengthen the rights of residents to submit grievances, that residents can receive cultural preferences with regard to meal preparation along with religious and other health related restrictions, that residents who aren't English proficient receive information in a language they can understand, and that residents can live in the home and file complaints without fear of reprisal and retaliation. She said these recommendations reflect grievances addressed by the

ombudsman related to assisted living homes. She drew attention to a letter provided to committee members that the Long Term Care Ombudsman submitted to the committee chair.

[3:49:13 PM](#)

REPRESENTATIVE PRAX expressed concern that these recommendations are somewhat nebulous and subject to interpretation. It is up to the ombudsman to determine these things, he opined, and it goes without saying that it should be without fear of reprisal or retaliation but saying it can open the door. People in this situation can be obstreperous and the facility must be able to exercise some control; if the facility goes too far then the resident's remedy is to go to the ombudsman. It should be worked out on a case-by-case basis rather than trying to spell it out in statute.

REPRESENTATIVE SPOHNHOLZ offered her belief that these would not be too nebulous or ambiguous. She said the average number of residents in an assisted living home in Alaska is three, and they are homes in communities, not large facilities. Although people may need assisted living support, they should still be able to continue having culturally appropriate foods, access to the internet, and to feel safe in the home for which they are paying for a service. The ombudsman can help the department in the regulation drafting process for complying with the statute, and that process would include an opportunity for public comment and for operators of these homes to provide feedback.

[3:53:26 PM](#)

CO-CHAIR ZULKOSKY stated she would like to hear from the department as to whether the preference is for broad language or prescriptive language to capture the recommendations from the Office of Long Term Care Ombudsman.

MR. LEE replied that [the Division of Senior and Disabilities Services] has looked at Amendment 2 and does not believe it would put the division at risk of violating the settings rules. He deferred to Mr. Craig Baxter to answer the question from the perspective of the Division of Health Care Services.

CO-CHAIR ZULKOSKY related that she has talked to some constituent groups that run assisted living homes and they welcomed the language in this amendment. She requested confirmation that there would be regulation setting processes



that would provide assisted living facilities with the opportunity to respond to this new statute.

MR. LEE deferred to Mr. Baxter to answer the question.

3:55:16 PM

CRAIG BAXTER, Assisted Living Home Manager, Residential Licensing/Background Check Program, Division of Health Services, Department of Health and Social Services (DHSS), on behalf of the House Rules Committee by request of the governor, answered that it depends on which one of the house rules the amendment addresses. Some of them are fine and the division would be able to enforce with the way the amendment is written; others are too broad, and he would recommend the statute clarify some things more clearly. His concern, he continued, is writing and implementing a regulation package versus addressing it here within the statute within the amendment, which would give a lot more guidance on how to enforce. While he knows how the appeals process goes and what the intent is, he can see [the department] struggling to hold facilities accountable with some of the items. The ombudsman's recommended amendments are great, but some are broad enough that it might be difficult for [the department] with the statute alone to provide quality enforcement without there being a regulation package to clarify and flush those out.

REPRESENTATIVE SPOHNHOLZ asked whether she is correct in understanding Mr. Baxter to have said that a regulations package would be needed to define more specifically the details for how to implement Amendment 2.

MR. BAXTER replied yes. For example, he said, the "receive quality care" amendment could be taken in many ways, so a definition or flushing out within the amendment would give [the department] some guidelines as to what the intent would be for quality care. The food amendment is fine because the department already has regulations that address food. Regarding the "without fear of reprisal or retaliation" amendment, there are already statutes that address retaliation, but more guidance is needed on the word "fear." This is because someone could interpret the actions of a facility in a way that they would be afraid of reprisal when reprisal or retaliation weren't intended. Must [the department] show that the facility intended to take a reprisal or a retaliatory action against the individual? [The department] would have to come up with a way to define some of those items to be on solid footing for

enforcement. The proposed changes are positive and needed, but more clarification would go a long way as far as providing meaningful enforcement.

CO-CHAIR SNYDER remarked that she is hearing struggle back and forth between desire to have statute that is prescriptive or statute that is wide enough to give some latitude for appropriate interpretation.

[3:59:43 PM](#)

REPRESENTATIVE KURKA commented that it looks like clarification is being added on the list of what the rights are of the residents of a home, but others are quite broad, and some seem over the top. He questioned whether "reasonable access to the Internet" is a right and whether it is a cost that should be incurred by the home. He said he is concerned with adding more and more things that are luxuries rather than basic needs.

REPRESENTATIVE SPOHNHOLZ related that "quality care" is included in Amendment 2 because 374 complaints were received in 2020, making it the second most frequent complaint for assisted living homes that year. In 2019, 583 complaints were received, making it a serious volume. She agreed the language in the amendment is broad but said she prefers not to be too specific in statute because the definition of "quality care" may change a bit over time. The quality of care is a right that also aligns with the home and community-based services final rule that focuses on quality individual experiences. The long term care ombudsman says that the quality of care should focus on a person-centered approach to care, which is well defined because the report goes into this in detail. She said she has been repeatedly assured that the long term care ombudsman and [the Residential Licensing Section] have a very robust working relationship. It is made clear in the long term care ombudsman's report that residents have the right to make choices and to control decisions in their lives even in an assisted living home. Residents have the right to provide input into their care plan and their care planning team. She suggested the department work with the long term care ombudsman to go into more granular detail regarding the definition of quality care. Representative Spohnholz disagreed that internet access is not a right. She argued that it is a right because in 2021 a person who doesn't have access to the internet lacks access to basic information and this is not less important for people with disabilities or elders who need physical support. Amendment 2 doesn't say how it would be paid for, she added, but internet access should be a right in 2021.

CO-CHAIR ZULKOSKY removed her objection to Amendment 2.

REPRESENTATIVE KURKA objected to Amendment 2. He said he would be more comfortable if the resident had the ability to incur the extra cost of the internet and again questioned whether it is a right to have access to the internet. He maintained that access to food being selected on cultural preferences could be extraordinarily broad and beyond convictions. He questioned whether cultural preference should be considered a right and said the menu should be looked at when a person is considering which home to go into.

A roll call vote was taken. Representatives Spohnholz, Zulkosky, and Snyder voted in favor of Amendment 2. Representatives Prax and Kurka voted against it. Therefore, Amendment 2 was adopted by a vote of 3-2.

[4:07:23 PM](#)

The committee took a brief at-ease at 4:07 p.m.

[4:07:47 PM](#)

CO-CHAIR SNYDER announced that CSSB 89(FIN) was held over.

REPRESENTATIVE KURKA noted that it was past the deadline for submitting amendments to the bill.

[4:08:47 PM](#)

The committee took an at-ease from 4:08 p.m. to 4:15 p.m.

**HB 105-DETENTION OF MINORS**  
**HB 116-JUVENILES: JUSTICE, FACILITIES, TREATMENT**

[4:15:26 PM](#)

CO-CHAIR SNYDER announced that the final order of business would be HOUSE BILL NO. 105, "An Act relating to the duties of the commissioner of corrections; relating to the detention of minors; relating to minors subject to adult courts; relating to the placement of minors in adult correctional facilities; and providing for an effective date." and HOUSE BILL NO. 116, "An Act relating to care of juveniles and to juvenile justice; relating to employment of juvenile probation officers by the Department of Health and Social Services; relating to terms used

in juvenile justice; relating to mandatory reporters of child abuse or neglect; relating to sexual assault in the third degree; relating to sexual assault in the fourth degree; repealing a requirement for administrative revocation of a minor's driver's license, permit, privilege to drive, or privilege to obtain a license for consumption or possession of alcohol or drugs; and providing for an effective date."

CO-CHAIR SNYDER recounted that during the committee's last meeting the overlap between HB 105 and HB 116 was discussed. She stated that HB 116 is rolled into the committee substitute that will be proposed today.

4:16:24 PM

CO-CHAIR ZULKOSKY moved to adopt the proposed committee substitute (CS) for HB 105, Version 32-GH1576\I, Radford, 5/1/21, as the working document. There being no objection, Version I was before the committee.

4:17:00 PM

MATT DAVIDSON, Social Services Program Officer, Division of Juvenile Justice (DJJ), Department of Health and Social Services (DHSS), explained the changes made under the proposed committee substitute, Version I, for HB 105. He stated that both the division and the department are excited to be at this point with these two important pieces of legislation, especially combining them into one bill. He said HB 105, Detention of Minors, and HB 116, Juveniles: Justice, Facilities, Treatment, meld together nicely given they deal with a similar subject and have several overlapping sections. Mr. Davidson related that Version I is comprised of 10 sections directly from HB 105 [Version 32-GH1576\B], 38 sections without changes directly from HB 116 [Version 32-LS0537\A], and 10 sections that are a meld between the two bills. He further related that Version I contains updates to sections of HB 105 to reflect language adopted by the Senate when that body considered [SB 91, Version 32-GS1576\I], the companion to HB 105. He noted that for the sectional analysis he will only highlight the changes that were made that were not included in HB 105 or HB 116.

MR. DAVIDSON explained that Version I, Section 6, page 3, [lines 9-10], contains an amendment suggested by Representative Kurka regarding the definition of a position of authority for the purposes of sexual abuse of a minor. The suggested amendment moved the phrase "substantially similar" to a different position

in the statute that would be more inclusive of the entire list of officials that could have a position of authority.

MR. DAVIDSON specified that Version I, Section 13, reflects a minor legislative drafting change that was made in [SB 91]. He said Section 14 combines the new federal rules about detention of non-delinquent minors that are in HB 105 with language in HB 116 describing facilities. He stated that Section 16 is HB 105 with the updated terms found in HB 116. He conveyed that Section 19 is a drafting style change that was made in the other body but with no change in the meaning of the bill. He related that Section 21 contains a minor drafting style revision.

4:23:45 PM

MR. DAVIDSON explained that Version I, Section 25, which is Section 25 of HB 105 and Section 8 of [SB 91], is an amendment that provides for minors who have been waived into the adult correctional system to be held in DJJ facilities. He pointed out that this is the core of HB 105 and that the other body made changes to that section to help clarify the expectations for the new rules that are being operated under. The exceptions to the rule are specified for during transport to the DJJ facility to attend court hearings or under the court appeal processes of Section 25, [subsections] (c) and (d). Also, a specific right for counsel is to be given to a minor who is going to be moved into an adult system under [subsections] (c) and (d). The most important change in Section 25 is the addition and definition of the term "waived minor." Because adding these minors who have been waived into the adult correctional system into delinquency statute was causing confusion, a very specific definition was provided in [subsection] (g) of Section 25.

MR. DAVIDSON stated that Section 28 contains a minor drafting style change that was made in the other body. He conveyed that Sections 30-34 are a combination of HB 116 with the drafting style changes made in the other body. The same provisions that are in HB 105 are combined with HB 116, the new definition of DJJ facilities. He explained that Sections 36-37 take the other body's version which added a new subsection (f) clarifying the expectation that waived minors will be transported directly to DJJ facilities rather than going to adult facilities, and the combination of HB 116 terminology. He said Section 55 combines the applicability sections of both bills. He related that the final section, Section 58, is from [HB 105, Section 20, which establishes an effective date of July 1, 2021, except as noted in Section 57.]

[4:26:20 PM](#)

REPRESENTATIVE SPOHNHOLZ thanked Tracy Dompeling, Matt Davidson, and Suzanne Cunningham with the administration for collaborating with her staff person Megan Holland on bringing together HB 105 and HB 116.

REPRESENTATIVE KURKA noted he hasn't yet reviewed Version I but likes "the fix" done on Section 6 that in HB 116 would possibly have allowed for someone to not be prosecuted for sexual assault.

REPRESENTATIVE SPOHNHOLZ thanked Representative Kurka for his work on that definition.

CO-CHAIR SNYDER concurred it was a good catch by Representative Kurka and an elegant fix to that section.

[HB 105 and HB 116 were held over.]

[4:29:03 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 4:29 p.m.